IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION ST.**NO.29542 OF 2006**

Mohan Mansu Bhosale ...Applicant
vs.
Balraj Krishna Dhajan & ors. ...Respondents

Mr.T.D.Deshmukh for the Applicant
Mr.Walawalkar with Mr.Surel Shah for Respondent Nos.1 to 3.

CORAM: A.S.OKA,J.
DATE : MARCH 22,2007.

P.C.:

1. This Revision Application has been preferred by the original Defendant. The Petitioner filed an Application at Exh.22 contending that the preliminary issue as regards maintainability of the suit, bar of limitation and valuation of the suit for court fees will have to be framed and tried before the hearing of the Application at Exh.5. The said Application has been rejected by the impugned order dated 17th June 2005.

2. The learned Counsel for the Petitioner submitted that the aforesaid issues will have to be gone into by the Trial Court before the Application at Exh.5 is decided. He submitted that in any event, the plaint deserves to be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 on the ground that the suit is not maintainable and that the same is barred by limitation. He submitted that the Trial Court committed an error by not going into the merits of the Application.

3. I have considered the submissions. Application at Exh.22 was made at a stage when the Petitioner had not filed the

written statement. Therefore, there was no occasion for the trial Court to frame the issues much less a preliminary issue. As the legal position stands today, the decision of a learned Single Judge of this Court holds the field to the effect that section 9-A of the said Code stands repealed.

4. Therefore, the trial Court could not have framed the preliminary issues at the stage when the Application for temporary injunction at Exh.5 was to be heard. Therefore, no fault can be found with the impugned order by which the Application at Exh.22 has been rejected.

5. However, the Petitioner can always urge at the hearing of the Application at exh.5 that the original Plaintiffs have no prima facie case on the ground that the suit is prima facie barred by limitation and is not maintainable.

6. In the Application at Exh.22, there is no prayer made for the rejection of the Plaint. It is always open for the Petitioner to apply for rejection of the plaint by making an appropriate application notwithstanding the rejection of the Application at Exh.22.

7. Hence, subject to what is stated above, the Revision Application is rejected. It is made clear that the issues which are raised by the Petitioner in the Application at Exh.22 are expressly kept open to be decided at the appropriate stage.

JUDGE